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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,081	03/24/2004	Matthew D. Whittton	GP-303000	5371

7590 12/11/2008
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EXAMINER

JEN, MINGJEN

ART UNIT	PAPER NUMBER
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3664

MAIL DATE	DELIVERY MODE
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12/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/808,081

Applicant(s)

WHITTTON, MATTHEW D.

Examiner

IAN JEN

Art Unit

3664

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Applicant's remark has been addressed as following:

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/KHOI TRAN/
Supervisory Patent Examiner, Art Unit 3664

/Ian Jen/
Examiner, Art Unit 3664

In response to applicant's argument that the rejection of claim 1 and 6 are improper because the one of ordinary skill in the art's analysis of the Graham factual inquiries is flawed. Applicant's attention is directed to MPEP § 2143 Basic Requirements of a Prima Facie of Obviousness where MPEP § 2143.01 states the prior art must suggest the desirability of the claimed invention. Applicant's attention is further directed MPEP § 904.02(a) where indicates the proper classification search guideline for the prior art reference where the primary reference Minowa et al (US Pat No. 6243637) classified in class 701/51, directed to transmission control suggested the desirability of automatic transmission controlled by clutch based on timing, as the same with the claimed invention Whitton et al; where Narita (US Pat No 5241477) classified in the class 364/424, cross reference with class 701/66, subclass of 701/51. Applicant's attention is further directed to MPEP § 2143.02 states reasonable expectation of success is required; obviousness requires only a reasonable expectation of success. Applicant's attention is further directed to Minowa et al and Narita, where Minowa et al provides a known device and method, off going clutch, on going clutch and clutch generated pressure command; Narita provides known method, first derivative technique, which also exhibited on Minowa et al, Fig 11, 50 where it is obvious for one of ordinary skill in the art to provide a known technique/method, that provided by Narita, to a known device/method of Minowa et al ready for improvement to yield predictable results. Applicant's attention is further directed MPEP § 2143.03 states where all the claim limitation need to be addressed. Applicant's attention is further direct to claim rejection of claim 1 and claim 6 where all the claim limitation has been addressed.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Minowa et al shows on-going clutch, off-going clutch, clutch generated pressure command, Narita shows first derivative with respect to time; Minowa et al provides a known device and method, off going clutch, on going clutch and clutch generated pressure command; Narita provides known method, first derivative technique, which also exhibited on Minowa et al, Fig 11, 50 where it is obvious for one of ordinary skill in the art to provide a known technique/method, that provided by Narita, to a known device/method of Minowa et al ready for improvement to yield predictable results.

In response to applicant's argument that Fig 11 of Minowa et al fails to show determining the first derivative of time for any variable of function, it is noted that the features upon which applicant relies (i.e., where for any variable of function that implemented by first derivative of time; first time derivative of gear ratio G) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that Vilim et al does not show the recited claim limitation that missed from claim 1 missing from Minowa et al. Applicant's attention is directed to claim 1 rejection where each and every claim limitation is addressed. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, where a known technique/method, neural network system, that is provided by Vilim et al, to a known device/method, transmission, clutch, clutch control of transmission of Minowa et al to ready for improvement to yield predictable results.

In response to applicant's argument that Narita does not show first derivative with respect to time of at least a portion of the off-going clutch. Applicant's attention is further directed to Narita where shows first derivative being characterized by local minima and maxima which recited in the claim limitation of claim 11 (Col 7, lines 5-10 where the data points are plotted with respect to recorded time in Fig 11; Col 2, lines 14-15). Applicant's attention is further directed to section 6, 7, where the argument regarding the first derivative with respect to time of at least a portion of the off-going clutch pressure command is addressed